

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN,
and SHAUN D. COHEN,**

Defendants.

Civil Action No. 18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**RECEIVER’S MOTION TO COMPEL THE LAW OFFICES OF
ARNOLD H. LANDIS, P.C. TO COMPLY WITH SUBPOENA FOR DOCUMENTS**

Kevin B. Duff, as the receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen, as defined in the Order Appointing Receiver entered August 17, 2018, as supplemented (Dkt. 16, 290, 634), and pursuant to the powers vested in him by Order of this Court, respectfully moves for an order compelling the Law Offices of Arnold H. Landis P.C. (the “Law Firm”) to produce documents responsive to the Subpoena served upon it in December 2022. In support of the motion, the Receiver states as follows:

1. On or about December 9, 2022, the Receiver attempted to serve a subpoena for documents by certified mail to the address of the Law Firm’s registered agent listed with the office of the Illinois Secretary of State. The USPS was unable to deliver the certified mail, so the Receiver’s office reached out to confirm the Law Firm’s current mailing address. In response, Arnold Landis agreed to accept service by email. (*See Exhibit A*)

2. Accordingly, on December 30, 2022, the Receiver served a new subpoena on the Law Firm by email to Arnold Landis. (*See Exhibit B*)

3. The subpoena demands production of the following documents

Copies of all settlement agreements relating to Bald, et al., v. Mudlic Properties, LLC, et al., Case No. 20-CH-483 (Cook Cty., Chancery) or Paper Street Realty LLC v. Mudlic Properties, LLC, et al., Case No. 19-CH-14244 (Cook Cty., Chancery) and documents showing the amounts, dates, recipients, and beneficiaries of all payments made pursuant to the settlement agreements, including but not limited to copies of any distribution schedules and ALTA settlement statements relating to the sale of the property located at 6801 S East End Ave.”

4. The documents requested are relevant to this matter because claims have been submitted in the receivership by certain claimants who may have received a recovery from the state court litigation. Review of the requested information is sought to investigate whether such recoveries would result in a duplicative or windfall distribution from funds in this action.

5. Counsel for the Receiver spoke by telephone with Mr. Landis on January 3, 2023, and Mr. Landis agreed he would try to produce responsive documents by the end of the following week (*i.e.*, by January 13, 2023). (*See Exhibit C*)

6. The Law Firm has not produced documents, nor responded to subsequent follow-up emails requesting the same. (*See Exhibits D and E*)

7. The Receiver’s counsel sent a copy of the motion and exhibits to Arnold Landis at alandis@landislaw.net on Friday, March 24, 2023, notifying him that the Receiver would file the motion unless responsive documents were produced by the close of business on Wednesday, March 29, 2023. Mr. Landis neither responded to that correspondence nor produced the subpoenaed documents. (*See Exhibit F*)

8. The Receiver requests an award of his attorneys’ fees incurred for its counsel’s efforts to secure compliance with the subpoena and in bringing this motion due to the Law Firm’s

contumacious failure to comply with the subpoena despite repeated requests for compliance and more than reasonable time to do so.

WHEREFORE, the Receiver respectfully requests that this Court enter an order directing the Law Offices of Arnold H. Landis P.C to:

- A. Produce all documents that are responsive to the Subpoena attached hereto as Exhibit B;
- B. Pay the reasonable costs, including attorneys' fees, incurred by the Receiver associated with his efforts to gain compliance with the subpoena, including the cost of bringing this motion; and
- C. For such other and further relief as this Court deems appropriate.

Dated: March 31, 2023

Respectfully submitted,

s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplawn.net
jwine@rdaplawn.net

Attorneys for Kevin B. Duff, Receiver

From: [Arnold Landis](#)
To: [Ania Watychowicz](#)
Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587
Date: Friday, December 30, 2022 10:57:04 AM

I can accept it by email

Arnold H. Landis

From: Ania Watychowicz <aw@rdaplaw.net>
Sent: Friday, December 30, 2022 11:49:17 AM
To: Arnold Landis <alandis@landislaw.net>
Cc: Jodi Wine <jwine@rdaplaw.net>
Subject: RE: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

Mr. Landis,

Our firm attempted to serve a subpoena for documents by certified mail to the address of your registered agent on December 9, 2022 but the post office has been unable to confirm delivery. Please confirm your current mailing address in order for us to properly serve the subpoena. In the alternative, please advise us if you agree to accept the service by email instead of certified mail.

Thank you.

Ania Watychowicz
Paralegal

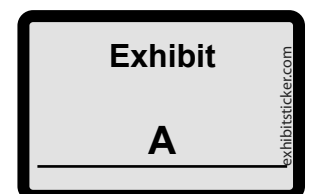
Rachlis Duff & Peel, LLC
542 S. Dearborn St., Suite 900
Chicago, Illinois 60605

312-275-5102 direct
312-733-3950 main
312-733-3952 fax

aw@rdaplaw.net
www.rdaplaw.net

RACHLIS DUFF & PEEL, LLC
E-MAIL CONFIDENTIAL NOTICE

This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized



interception of this e-mail is a violation of federal criminal law.

From: Arnold Landis <alandis@landislaw.net>
Sent: Friday, December 30, 2022 9:47 AM
To: Ania Watychowicz <aw@rdaplaw.net>
Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

Please send letter to me

Arnold H. Landis

From: Ania Watychowicz <aw@rdaplaw.net>
Sent: Friday, December 30, 2022 10:34:03 AM
To: Silvie Karova <skarova@landislaw.net>
Cc: Arnold Landis <alandis@landislaw.net>; Jodi Wine <jwine@rdaplaw.net>
Subject: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

Silvie,

Please confirm the current mailing address for Law Offices of Arnold H. Landis, P.C..

We sent a certified letter to 444 N. Wabash, 5th Floor, Suite E-8, Chicago, IL 60611 but it is our understanding that USPS delivery attempt was unsuccessful.

Thank you.

Ania Watychowicz
Paralegal

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From: [Ania Watychowicz](#)
To: [Arnold Landis](#)
Cc: [Jodi Wine](#)
Subject: RE: SEC v. EquityBuild, Inc., Case No. 18-cv-5587
Date: Friday, December 30, 2022 11:14:10 AM
Attachments: [221230 Landis Subpoena Duces Tecum.pdf](#)

Mr. Landis,

Attached is the Receiver's Subpoena for Documents in the above referenced matter.

Thank you.

Ania Watychowicz
Paralegal

Rachlis Duff & Peel, LLC
542 S. Dearborn St., Suite 900
Chicago, Illinois 60605

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From: Arnold Landis <alandis@landislaw.net>
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Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

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Arnold H. Landis

From: Ania Watychowicz <aw@rdaplaw.net>

Exhibit

B

exhibitstick.com

Sent: Friday, December 30, 2022 11:49:17 AM
To: Arnold Landis <alandis@landislaw.net>
Cc: Jodi Wine <jwine@rdaplaw.net>
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To: Silvie Karova <skarova@landislaw.net>

Cc: Arnold Landis <alandis@landislaw.net>; Jodi Wine <jwine@rdaplaw.net>

Subject: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

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Paralegal

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UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

U.S. SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

EQUITYBUILD, INC., et al.

Defendant

Civil Action No. 18-cv-5587

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Law Offices of Arnold H. Landis, P.C., 444 N Wabash, 5th Floor, Ste E-8, Chicago, IL 60611, alandis@landislaw.net

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Copies of all settlement agreements relating to *Bald, et al., v. Mudlic Properties, LLC, et al.*, Case No. 20-CH-483 (Cook Cty., Chancery) or *Paper Street Realty LLC v. Mudlic Properties, LLC, et al.*, Case No. 19-CH-14244 (Cook Cty., Chancery) and documents showing the amounts, dates, recipients, and beneficiaries of all payments made pursuant to the settlement agreements, including but not limited to copies of any distribution schedules and ALTA settlement statements relating to the sale of the property located at 6801 S East End Ave.

Place: Rachlis Duff & Peel, LLC
542 S. Dearborn Street, Suite 900
Chicago, IL 60605

Date and Time:

01/20/2023 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/30/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michael Rachlis

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Kevin B. Duff, Receiver for EquityBuild, Inc., et al., who issues or requests this subpoena, are:

Michael Rachlis, Rachlis Duff & Peel, LLC, 542 S. Dearborn Street, Suite 900, Chicago, IL 60605, 312-733-3955

mrachlis@rdaplawnet

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5587

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

From: [Jodi Wine](#)
To: [Silvie Karova](#)
Cc: [Ania Watychowicz](#); [Arnold Landis](#)
Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587
Date: Tuesday, January 3, 2023 9:11:38 AM
Attachments: [221230 Landis Subpoena Duces Tecum.pdf](#)

Arnold:

Thank you for agreeing to accept service of the attached subpoena by email and for endeavoring to provide the documents by the end of next week at the latest.

Sincerely,
Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

542 South Dearborn Street, Suite 900

Chicago, Illinois 60605

jwine@rdaplawn.net

mobile 312-351-3231

direct 312-275-5108

On Sun, Jan 1, 2023 at 8:40 PM Silvie Karova <skarova@landislawn.net> wrote:

The new address is 1001 Green Bay Road, #190, Winnetka, IL

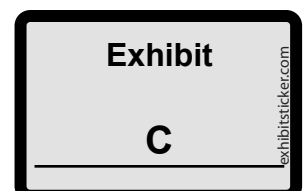
Silvie Karova

Law Offices of Arnold H. Landis, P.C.

444 N. Wabash, 5th Floor, Suite E-8

Chicago, IL 60611

P: (312) 236-6268



F: (312) 236-6269

From: Ania Watychowicz <aw@rdaplaw.net>
Sent: Friday, December 30, 2022 9:34 AM
To: Silvie Karova <skarova@landislaw.net>
Cc: Arnold Landis <alandis@landislaw.net>; Jodi Wine <jwine@rdaplaw.net>
Subject: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

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Thank you.

Ania Watychowicz

Paralegal

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From: Jodi Wine
To: Arnold Landis
Cc: :Silvie Karova; Ania Watychowicz
Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587
Date: Wednesday, January 18, 2023 4:56:22 PM

Arnold:

When we spoke on January 3, you anticipated providing these documents by January 13.
What is the status?

Thank you,
Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

542 South Dearborn Street, Suite 900

Chicago, Illinois 60605

jwine@rdaplaw.net

mobile 312-351-3231

direct 312-275-5108

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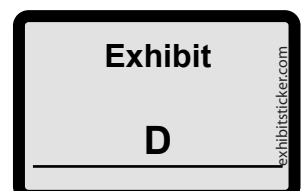
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To: [Arnold Landis](#)
Cc: [:Silvie Karova](#); [Ania Watychowicz](#)
Subject: Re: SEC v. EquityBuild, Inc., Case No. 18-cv-5587
Date: Thursday, January 26, 2023 9:30:05 AM

Hi Arnold:

It's going on four weeks since you agreed to produce these documents, and you have not responded at all to my email from last week. What is the status? I would hate to have to file a motion for rule to show cause on this, but I am not sure what other options are available.

Please advise,
Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

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When we spoke on January 3, you anticipated providing these documents by January 13.
What is the status?

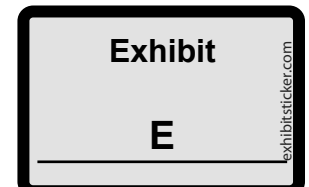
Thank you,
Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

542 South Dearborn Street, Suite 900

Chicago, Illinois 60605



jwine@rdaplawn.net

mobile 312-351-3231

direct 312-275-5108

On Tue, Jan 3, 2023 at 9:11 AM Jodi Wine <jwine@rdaplawn.net> wrote:

Arnold:

Thank you for agreeing to accept service of the attached subpoena by email and for endeavoring to provide the documents by the end of next week at the latest.

Sincerely,

Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

542 South Dearborn Street, Suite 900

Chicago, Illinois 60605

jwine@rdaplawn.net

mobile 312-351-3231

direct 312-275-5108

On Sun, Jan 1, 2023 at 8:40 PM Silvie Karova <skarova@landislawn.net> wrote:

The new address is 1001 Green Bay Road, #190, Winnetka, IL

Silvie Karova

Law Offices of Arnold H. Landis, P.C.

444 N. Wabash, 5th Floor, Suite E-8

Chicago, IL 60611

P: (312) 236-6268

F: (312) 236-6269

From: Ania Watychowicz <aw@rdaplaw.net>

Sent: Friday, December 30, 2022 9:34 AM

To: Silvie Karova <skarova@landislaw.net>

Cc: Arnold Landis <alandis@landislaw.net>; Jodi Wine <jwine@rdaplaw.net>

Subject: SEC v. EquityBuild, Inc., Case No. 18-cv-5587

Silvie,

Please confirm the current mailing address for Law Offices of Arnold H. Landis, P.C..

We sent a certified letter to 444 N. Wabash, 5th Floor, Suite E-8, Chicago, IL 60611 but it is our understanding that USPS delivery attempt was unsuccessful.

Thank you.

Ania Watychowicz

Paralegal

Rachlis Duff & Peel, LLC

542 S. Dearborn St., Suite 900

Chicago, Illinois 60605

312-275-5102 direct

312-733-3950 main

312-733-3952 fax

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RACHLIS DUFF & PEEL, LLC

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From: [Jodi Wine](#)
To: [Arnold Landis](#)
Cc: [EquityBuild Receiver](#)
Subject: Motion to compel response to subpoena
Date: Friday, March 24, 2023 2:20:02 PM
Attachments: [Motion to Compel Discovery from Landis \(draft\).docx](#)
[Exhibits to Motion to Compel.zip](#)

Arnold, please see attached draft motion related to the subpoena served in December in the matter of SEC v EquityBuild, 18-cv-5587, N.D. Illinois.

If you do not fully comply with the motion by next Wednesday, March 29, 2023, then we will file the motion and seek all fees associated with efforts to gain his compliance.

Thank you,
Jodi

Jodi Rosen Wine

Rachlis Duff & Peel, LLC

542 South Dearborn Street, Suite 900

Chicago, Illinois 60605

jwine@rdaplawn.net

mobile 312-351-3231

direct 312-275-5108

